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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 PAMELA THOMAS, ) No. CV 12-09915-VBK  
12 )  
13 Plaintiff, ) MEMORANDUM OPINION  
14 ) AND ORDER  
15 v. )  
16 ) (Social Security Case)  
17 CAROLYN W. COLVIN, Acting )  
Commissioner of Social )  
Security, )  
18 Defendant. )  
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18 This matter is before the Court for review of the decision by the  
19 Commissioner of Social Security denying Plaintiff's application for  
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have  
21 consented that the case may be handled by the Magistrate Judge. The  
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to  
23 enter judgment upon the pleadings and transcript of the record before  
24 the Commissioner. The parties have filed the Joint Stipulation  
25 ("JS"), and the Commissioner has filed the certified Administrative  
26 Record ("AR").

27 Plaintiff raises the following issue:

28 1. Whether the Administrative Law Judge ("ALJ") gave proper

1 consideration to Plaintiff's testimony and statements.  
2 (JS at p. 4.)  
3

4 This Memorandum Opinion will constitute the Court's findings of  
5 fact and conclusions of law. After reviewing the matter, the Court  
6 concludes that the decision of the Commissioner must be affirmed.  
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8 I

9 **THE ALJ PROPERLY ASSESSED PLAINTIFF'S CREDIBILITY**

10 After conducting a hearing, the ALJ determined that Plaintiff has  
11 the residual functional capacity ("RFC") to perform light work, and  
12 among other things, is able to stand and walk up to six hours in an  
13 eight-hour workday, and sit up to six hours in an eight-hour workday  
14 with normal breaks. This finding is consistent with the conclusions  
15 of all the examining and non-examining doctors in this case (there are  
16 no treating sources). These include Dr. Sourehnissani, who did a  
17 consultative examination ("CE") in internal medicine at the request of  
18 the Department of Social Services on December 15, 2009 (AR 241-244).  
19 Indeed, Dr. Sourehnissani was of the opinion that Plaintiff was  
20 capable of greater exertional abilities than are encompassed in light  
21 work (i.e., that she could carry up to 50 pounds occasionally and 25  
22 pounds frequently. (AR 245.)

23 A prior internal medicine CE was conducted at the request of the  
24 Department of Social Services on November 1, 2008 by Dr. Benrazavi (AR  
25 263-268) who also concluded, consist with Dr. Sourehnissani, that  
26 Plaintiff could lift and carry up to 50 pounds occasionally and 25  
27 pounds frequently, with standing and walking up to six hours per day  
28 and sitting up to six hours per day. (AR 267.)

1 A Physical Residual Functional Capacity Assessment was rendered  
2 by non-examining physician Dr. Yu, who agreed with the other doctors  
3 that Plaintiff could lift 50 pounds occasionally, 25 pounds  
4 frequently, stand and/or walk with normal breaks for six hours in an  
5 eight-hour workday, and sit with normal breaks for a total of six  
6 hours in an eight-hour workday. (AR 247.)

7 Plaintiff does not agree with the ALJ's interpretation and  
8 summation of her own description of her subjective symptoms, described  
9 in the ALJ's Decision as difficulty standing and walking; suffering  
10 from breathing problems; swelling of her knees and high blood  
11 pressure; need to have her daughter help her bathe due to her  
12 swelling; and that she requires someone to comb her hair because she  
13 cannot lift her shoulder. (AR 13-14, citing exhibits.)

14 In assessing Plaintiff's credibility with regard to her testimony  
15 as to subjective symptoms, the ALJ determined that while her medically  
16 determinable impairments could reasonably be expected to cause the  
17 alleged symptoms, her statements concerning intensity, persistence and  
18 limiting effects of these symptoms are not credible to the extent they  
19 are inconsistent with the determined RFC. (AR 15.)

20 The factors to be considered in determining credibility are well  
21 established both in case law and administrative regulations. See Fair  
22 v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989); Thomas v. Barnhart, 278  
23 F.3d 947, 958-959 (9th Cir. 2002); 20 C.F.R. §§ 404.1529(c);  
24 416.929(c); Social Security Ruling ("SSR") 96-7p. Included among the  
25 evaluative factors are a claimant's daily activities, and evidence  
26 from physicians and third parties. Here, the ALJ relied upon the  
27 consistent opinions of the examining and non-examining physicians, and  
28 in fact, erred in Plaintiff's favor by reducing her exertional

1 abilities to those encompassed in light work. With regard to  
2 Plaintiff's testimony as to her activities of daily living, Plaintiff  
3 asserts that according to accepted case law, she need not be in a  
4 vegetative state in order to be disabled. (JS at 10, citing Vertigan  
5 v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001.)

6 In accordance with the above-cited cases and regulations, the ALJ  
7 in fact did give consideration to Plaintiff's own descriptions of her  
8 activities of daily living ("ADL"). She indicated she had a driver's  
9 license and was able to drive, and drove her father and helped him to  
10 prepare his meals; she engaged in physical therapy exercises every  
11 morning; she volunteered at her church and served breakfast or worked  
12 in a day care center checking the children; she watched her  
13 grandchildren. Certainly, Plaintiff's own description of her  
14 activities in this regard contradicts her claims that she cannot do  
15 such basic things as dress herself or comb her hair. These are  
16 contradictions which are not only obvious in the record, but which the  
17 ALJ was justified in noting in depreciating Plaintiff's credibility.

18 With regard to the opinions of physicians, while contradictions  
19 between subjective testimony and objective medical evidence cannot be  
20 the sole basis to depreciate credibility, they do constitute one valid  
21 evaluative factor. (See 20 C.F.R. § 416.929(c)(1) & (2) (2013).) See  
22 also Batson v. Commissioner of Social Security Administration, 359  
23 F.3d 1190, 1196 (9th Cir. 2004); Moncada v. Chater, 60 F.3d 521, 542  
24 (9th Cir. 1995); Nyman v. Heckler, 779 F.2d 528, 530 (9th Cir. 1985).

25 Based on the record before the Court, it must conclude that the  
26 ALJ made sufficiently specific findings and did not arbitrarily  
27 discredit Plaintiff's testimony. See Orteza v. Shalala, 50 F.3d 748,  
28 750 (9th Cir. 1995). In sum, the Court finds that the ALJ provided

1 clear and convincing reasons to depreciate Plaintiff's credibility  
2 based on her subjective pain and symptom testimony. For this reason,  
3 the Court finds no merit in Plaintiff's sole issue in this litigation,  
4 and orders that the Decision of the Commissioner will be affirmed and  
5 the matter will be dismissed with prejudice.

6 **IT IS SO ORDERED.**

7  
8 DATED: August 23, 2013

/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE